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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 130036.00014

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on 23 FEB 2007

Signature: /Joseph P. Lally/

Typed or printed name: JOSEPH P. LALLY

Application Number	Filed
10/040,573	11-02-2001

First Named Inventor: FENTON

Art Unit	Examiner
2134	POLTORAK

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [ ] attorney or agent of record. Registration number _____.
- [X] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34: 38,947

/Joseph P. Lally/
Signature

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23 FEB 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [ ] *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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OIPE IAP68
FEB 28 2007
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Fenton *et al.*
Serial No.:	10/040,573
Filing Date:	November 2, 2001
Confirmation No.:	2730
Art Unit:	2134
Examiner:	Peter Poltorak

Title: Method and System for Secure Communication

PRE APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In response to the Final Office Action mailed August 23, 2006, Applicant respectfully presents this request for review in conjunction with a contemporaneously filed Notice of Appeal. A Petition extending the period for response is submitted herewith.

Independent Claims 1, 14, 26, 41, and 55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,148,290 issued to Dan, *et al.* in view of U.S. Patent No. 6,684,329 issued to Epstein *et al.*

Claim 1 The rejection of Independent Claim 1 is improper because (1) the cited references do not teach or suggest all of the claim elements and (2) there is no proper motivation to combine or modify the references to arrive at the claimed combination.

The references do not teach or suggest generating a plurality of virtual private proxies (VPPs). Claim 1 recites generating a plurality of VPPs based on an agreement between a first entity and a second entity. The Examiner asserts that this element is taught by Dan, specifically citing col. 5 lines 49-63 and col. 6 lines 11-25 of Dan. Applicant disagrees.

The VPP recited in the claim is not anticipated by elements of a system and network explicitly described as being public. Dan's disclosure of its enforcement code components does not teach or suggest generating a plurality of VPPs because Dan's enforcement code components are not VPPs. Whereas it is axiomatic that the claimed VPPs are private, Dan's enforcement code components are components of a business service application that Dan explicitly describes and praises as being public. Dan's enforcement code components 502, 504, and 506 are components of Dan's business service application 500. Business service application 500 corresponds to Dan's business service 400 as depicted in FIG 4. See Dan col. 5, lines 51-52. Dan states unambiguously that the environment depicted in FIG 4 including business service 400 is a public environment. Moreover, Dan expressly declares the public nature of its environment to be an important aspect of Dan's application. See, e.g., Dan col. 5 lines 43-48. Applicant submits that a claim element reciting a VPP cannot be taught by the disclosure in a reference of enforcement code components expressly described as comprising a portion of a public application and environment.

The VPP recited in the claim is not anticipated by elements of a system and network explicitly that are clearly not proxies. In addition to not being private, the elements of Dan's system as depicted in FIG. 4 and FIG. 5 are not proxies. In the field of computer networks, a proxy machine or proxy server is a computer that offers a computer network service to allow clients to make indirect network connections to other network services. See, e.g., the "proxy server" entry from Wikipedia (http://en.wikipedia.org/wiki/Main_Page). A client connects to the proxy server, then requests a connection, file, or other resource available on a different server. The proxy provides the resource either by connecting to the specified server or by serving it from a cache.

Neither the business service 400, the business service engine 402, the business service application 500, nor the enforcement code components 502, 504, and 506 of Dan qualify as proxies. Dan itself, for example, does not describe any of these components as proxies. Instead, Dan accurately describes the implementation of its business service (400) as a business service application (500). Dan's application 500 receives requests from a client engine 516 and enforces adherence to a service contract 514. One of ordinary skill would readily recognize a distinction between a software application such as Dan's business service application 500 and a proxy as claimed. Because Dan's enforcement code components are neither private nor proxies, Dan does

not teach or suggest creating a plurality of VPPs. Accordingly, Applicant submits that the Section 103(a) rejection of Claim 1 is improper because the cited references do not teach or suggest all of the claim elements.

There is no motivation to modify Dan's public system using Epstein's firewall enhancement system. The rejection is further improper because there is no motivation to combine Dan and Epstein as the Examiner has done. Specifically, one of ordinary skill in the field would not be motivated to modify Dan's publicly accessible business service application to implement Epstein's system for improving firewalls because doing so would undermine a basic operating principle of Dan, namely, that its business service application is designed and intended to be implemented across publicly available networks. Dan at col. 5, lines 43-48. Where a proposed modification to a reference would undermine a fundamental principle of operation of the reference, obviousness cannot be established under Section 103(a). See, e.g., MPEP 2143.01. Accordingly, Applicant respectfully submits that the Section 103(a) rejection of independent claim 1 is improper because there is no motivation to combine or modify Dan and Epstein as the Examiner suggests to arrive at the claimed combination. Applicant, therefore, respectfully requests the review panel to consider and reverse the Section 103(a) rejection.

Claim 14 The rejection of Claim 14 is improper because the VPP recited in the claim is not anticipated by elements of a system and network explicitly described as being public. As argued above with respect to Claim 1, Dan's disclosure of its enforcement code components does not teach or suggest generating a plurality of VPPs because Dan's enforcement code components are not VPPs. Moreover, the VPP recited in the claim is not anticipated by elements of a system and network explicitly that are clearly not proxies. As argued above, neither the business service 400, the business service engine 402, the business service application 500, nor the enforcement code components 502, 504, and 506 of Dan qualify as proxies. In addition, there is no motivation to modify Dan's public system using Epstein's firewall enhancement system. Again, one of ordinary skill in the field would not be motivated to modify Dan's publicly accessible business service application to implement Epstein's system for improving firewalls because doing so would undermine a basic operating principle of Dan. Accordingly, Applicant respectfully requests the review panel to consider and reverse the Section 103(a) rejection of Claim 14 and its dependent claims.

Claim 26 The rejection of Claim 26 is improper because the VPP recited in the claim is not anticipated by elements of a system and network explicitly described as being public. As argued above with respect to Claim 1, Dan's disclosure of its enforcement code components does not teach or suggest generating a plurality of VPPs because Dan's enforcement code components are not VPPs. Moreover, the VPP recited in the claim is not anticipated by elements of a system and network explicitly that are clearly not proxies. As argued above, neither the business service 400, the business service engine 402, the business service application 500, nor the enforcement code components 502, 504, and 506 of Dan qualify as proxies. In addition, there is no motivation to modify Dan's public system using Epstein's firewall enhancement system. Again, one of ordinary skill in the field would not be motivated to modify Dan's publicly accessible business service application to implement Epstein's system for improving firewalls because doing so would undermine a basic operating principle of Dan. Accordingly, Applicant respectfully requests the review panel to consider and reverse the Section 103(a) rejection of Claim 26 and its dependent claims.

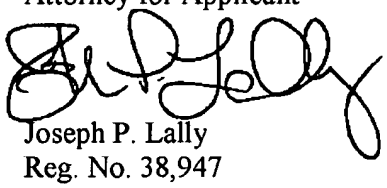
Claim 41 The rejection of Claim 41 is improper because the VPP recited in the claim is not anticipated by elements of a system and network explicitly described as being public. As argued above with respect to Claim 1, Dan's disclosure of its enforcement code components does not teach or suggest generating a plurality of VPPs because Dan's enforcement code components are not VPPs. Moreover, the VPP recited in the claim is not anticipated by elements of a system and network explicitly that are clearly not proxies. As argued above, neither the business service 400, the business service engine 402, the business service application 500, nor the enforcement code components 502, 504, and 506 of Dan qualify as proxies. In addition, there is no motivation to modify Dan's public system using Epstein's firewall enhancement system. Again, one of ordinary skill in the field would not be motivated to modify Dan's publicly accessible business service application to implement Epstein's system for improving firewalls because doing so would undermine a basic operating principle of Dan. Accordingly, Applicant respectfully requests the review panel to consider and reverse the Section 103(a) rejection of Claim 41 and its dependent claims.

Claim 55 The rejection of Claim 55 is improper because the VPP recited in the claim is not anticipated by elements of a system and network explicitly described as being public. As argued above with respect to Claim 1, Dan's disclosure of its enforcement code components does

not teach or suggest generating a plurality of VPPs because Dan's enforcement code components are not VPPs. Moreover, the VPP recited in the claim is not anticipated by elements of a system and network explicitly that are clearly not proxies. As argued above, neither the business service 400, the business service engine 402, the business service application 500, nor the enforcement code components 502, 504, and 506 of Dan qualify as proxies. In addition, there is no motivation to modify Dan's public system using Epstein's firewall enhancement system. Again, one of ordinary skill in the field would not be motivated to modify Dan's publicly accessible business service application to implement Epstein's system for improving firewalls because doing so would undermine a basic operating principle of Dan. Accordingly, Applicant respectfully requests the review panel to consider and reverse the Section 103(a) rejection of Claim 55 and its dependent claims.

For all of the foregoing reasons, Applicant respectfully requests consideration and rejection of the Section 103(a) rejections of the pending claims. Fees for an extension of time and a Notice of Appeal are submitted herewith. If however, the fees are missing or insufficient, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 10-0096 of Jackson Walker L.L.P. If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.236.2019.

Respectfully submitted,
JACKSON WALKER L.L.P.
Attorney for Applicant



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